IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO. 367 OF 2004.

Mrs. Pournima Avinash Pandit ..Appellants.

vs.

Shri Avinash Shankarlal Pandit ..Respondents.

Shri A.V. Anturkar for the appellant.
Shri H.V. Kode i/b S.A. Sawant for the respondent.

CORAM: V.C.DAGA,J.
DATED: 16-09-2004.

P.C.

. This appeal is directed against the order dated 8.3.2004 passed below application (Ex.10) in Petition No.l A-665/2003 by the Judge, Family Court, Pune, whereby the application for temporary injunction against the respondent-husband in relation to the matrimonial home, alleged to be belonging to both the parties, came to be rejected. The prayer made in the interim application was as under:

> "(a) The respondent be restrained from entering the premises i.e. 400/1, Shaniwar Peth, Pune 411030 till the final decision of the divorce case."

Factual Matrix:

2. The factual matrix in nutshell reveal that the appellant was married to the respondent on 9th January

1992. They have a minor son by name Saket from this wedlock. The appellant(wife) filed Divorce Petition No. A- 665/2003 against the respondent (husband), seeking divorce on the ground of cruelty. The substantive petition is still pending. During the pendency of the substantive petition,, the appellant-wife moved an application (Ex.10) and prayed for injunction against the respondent-husband, restraining him from entering in the matrimonial home.

3. The aforesaid application (Ex.10) was opposed by the respondent-husband by filing written statement at Ex.19. The learned Judge of the Family Court after hearing the parties to the application, was pleased to reject the said application vide order dated 8.3.2004. This order is the subject-matter of challenge in the present appeal from order.

4. The learned Counsel appearing for the appellant submitted that the father of the appellant-wife had paid an amount of Rs. 1,60,000/-to the appellant to seek accommodation at 400/1, Shanivar Peth, Pune-411 030. He further submitted that the appellant has been paying rent of the said house. It is wife’s contention that the respondent-husband is extremely violent and she was constrained to file police complaints against him with Vishrambag Police Station. That he has also been administering threats on phone

and has gone to the extent of restraining her from entering in the matrimonial home. The police complaint in that behalf was also made on 9th January 2004. It is her case that respondent- husband is a liquor addict as such her life is in danger. She submits that if she is asked to stay with him, the possibility of further serious problems cannot be ruled out.

5. The learned Counsel for the appellant further submitted that respondent is having separate place of residence. He is staying with his parents at Narayan Peth, Pune, as such he has an alternate place to stay. But the appellant has no other place to stay other than the place of her parents. The appellant-wife has, therefore, prayed that her husband be restrained from entering the matrimonial house at 400/1, Shanivar Peth, Pune till decision of the divorce petition on its own merits.

6. The respondent-husband filed his reply to the said application (Ex.19). He has denied the allegations made against him. He alleged that he had collected Rs. 2,25,000/- from his father and brother to give deposit to take house on rent. He, thus denied that the matrimonial home exclusively belongs to the appellant-wife. He also denied that he had threatened his wife. He stated that he has no objection if the

appellant-wife stays with him in the matrimonial home. However, if he is prevented from entering or occupying the very house, then he has no other alternative but to be on street. He, thus, prayed for dismissal of the appeal with costs.

Consideration:

7. Both parties made their respective oral submissions in consonance with their pleadings. After having heard rival parties, matrimonial dispute between the parties is not in dispute. Matrimonial relations between them still subsists. Petition for divorce is still pending in the Family Court at Pune. Admittedly, matrimonial home is a premises taken on rent by giving some hefty deposit. Both the parties claim to have made their contribution to the said deposit. As rightly held by the trial Court, it is difficult at this initial stage of litigation to come to any positive conclusion in this behalf. In order to resolve this controversy, evidence would be necessary. However, the trial Court refused to believe case sought to be made out by the appellant-wife and refused to grant interim injunction as prayed for.

8. It is not in dispute that father of the respondent-husband has separate premises at Narayan

Peth, Pune. It is also not difficult to believe the version of the appellant-wife that husband is staying with his parents at Narayan Peth, Pune. There is no evidence on record to suggest that the respondent is not staying with his parents. It is difficult to believe that the husband would be thrown on the street if injunction as prayed by appellant-wife is granted. It appears that due to strained relations appellant-wife was compelled to leave premises at Shanivar Peth, Pune and that she is required to stay with her parents. However, stay with parents cannot be a permanent solution to the problem because family of the parents are also entitled to have their own independent way of living. The appellant is keen to live separately from her parents at the premises located at Shanivar Peth, Pune. Since the respondent-husband has a place at Narayan Peth, Pune, no prejudice would be caused to the respondent-husband, if appellant is allowed to occupy the premises located at Shanivar Peth, Pune. Appellant is staying in the said premises along with her minor son Saket. If both of them i.e. husband and wife are allowed to stay separately, both of them will have a peaceful life during the pendency of the matrimonial litigation. If both of them stay together; then naturally both of them cannot have peaceful life in view of on-going matrimonial discord. Wife cannot be asked to stay permanently with her

parents. It is the duty of the husband to provide shelter to his wife. The respondent-husband always can stay with his parents during the pendency of the litigation between the parties.

9. In the circumstances, appellant-wife has made out prima facie case to occupy accommodation at Shanivar Peth, Pune, without any disturbance from her husband. The balance of convenience also lies in favour of the appellant-wife. If she is not allowed to occupy the premises in question free from interference of the husband, she will only suffer and not the husband as the husband can always be with his parents as of right. The impugned order is, thus, set aside. The application (Ex.10) is, thus, allowed. Interim injunction in terms of prayer clause extracted hereinabove is granted. The respondent-husband is restrained from entering the premises located at 400/1, Shanivar Peth, Pune, until decision of divorce petition on its own merits.

Appeal stands disposed of in terms of this order with no order as to costs.